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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Art Unit: 3673 }
Atty. Docket: 8266-0685 }
Applicant: Weismiller et al. }
Title: HOSPITAL BED }
Serial No.: 10/028,833 }
Filed: December 20, 2001 }
Examiner: Trettel, M. }

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on July 16, 2004

Timothy E. Niednagel
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Dated: July 16, 2004

REPLY BRIEF

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Reply Brief is respectfully submitted in response to issues raised in the Examiner's
Answer mailed May 17, 2004.

Summary

The various rationales put forth by the Examiner for rejecting claims 38, 40 to 44, and 65 to 69, including those provided in the Examiner's Answer, are not supported by the applied prior art references. The Examiner's interpretations are tainted by improper hindsight reasoning. The Examiner has impermissibly avoided and ignored teachings of the applied prior art references which specifically criticize combinations such as those created by the Examiner.

Reply

1. Claims 38 and 68 are patentable over the combination of Marra and Williams.

The Examiner stated the following in his Answer regarding the combination of Marra and Williams.

“The reasons pointed out by the appellant that allegedly teach away from the combination in fact do no such thing, instead they only discuss the differences and alleged superiority of any type of bed control system when mounted upon a pendant as used by Williams. This does not mean that the skilled artisan would then simply stop using sideguard mounted type bed control systems in favor of only a pendant mounted system, instead this means that a pendant mounted control system has its own peculiar advantages (and also disadvantages) over a sideguard mounted control system under some circumstances.” (Examiner's Answer, page 5).

As stated in the Appeal Brief, the combination of Marra and Williams is improper because there is a complete lack of any motivation to combine the references and because Williams specifically teaches away from providing a bed controller on or in a bed siderail.

“One inherent problem with current side rail controls or pendant speaker systems is that confused or challenged patients have a great deal of difficulty locating and manipulating the controls. For example, pendant speaker systems are not mounted in a fixed location and can be lost in the bed clothes. In the case of side rail controls, they are frequently mounted in locations which are not convenient or conducive to their use.

Another disadvantage of side-rail controls and pendant speaker systems is that they are generally accessible to the patient only when the patient is in the hospital bed. After surgery or other treatment, it is generally desirable to ambulate the patient as soon as is medically practicable. Studies show that ambulating patients as quickly as possible after surgical procedures

decreases the patient's recovery time and also the overnight stays required. Patients are therefore encouraged to sit upright in a bedside chair in the patient's hospital room rather than remain confined in the hospital bed. Current pendant systems and side rail controllers are frequently inaccessible to the patient once the patient is out of the hospital bed.

Current side rail control systems are also inaccessible to the visiting family member who might be staying with the patient during recovery. The existing T.V. controls and other environmental controls are not accessible to the visitor when they are fixed to the bed side rail." (See Williams, col. 1, lines 20-45) (emphasis added).

The Examiner completely ignores these teachings of Williams by improperly combining the microprocessor and display of Williams with the siderail controller of Marra. As shown above, the use of siderail controllers is repeatedly criticized in Williams. The Examiner is impermissibly using only portions (the microprocessor) of Williams and overstepping the bounds of examining Williams as "one of ordinary skill in the art" by contradicting clear statements in Williams. For example, when referring to the criticisms of siderail mounted controllers in Williams, the Examiner states that "this does not mean that the skilled artisan would then simply stop using sideguard mounted type bed control systems in favor of only a pendant mounted system, instead this means that a pendant mounted control system has its own peculiar advantages (and also disadvantages) over a sideguard mounted control system under some circumstances." (Examiner's Answer, page 5). The cited portions of Williams are clear and do not require any reinterpretation. The Examiner has impermissibly reinterpreted clear statements in Williams teaching away from the claimed combination.

In summary, the Examiner cannot combine the microprocessor and display of Williams with the siderail controls of Marra because Williams specifically teaches away from using siderail bed controls. There is a complete lack of motivation to combine the references. One of ordinary skill in the art would certainly not be compelled to combine Williams with Marra in view of Williams teaching away from such combination. See Section 1 of the Arguments in Appellants' Appeal Brief for the litany of recent Federal Circuit cases supporting Appellants' position on the lack of motivation to combine Williams and Marra.

For at least these reasons, Appellants submit that claim 38 patentably defines the invention over the combination of Marra and Williams. Claim 68 depends from properly allowable claim 38. Therefore, Appellants respectfully requests reversal of the Examiner's rejection of claims 38 and 68.

2. **Claim 65 is patentable over the combinations of Marra and Williams and Mitchell and Williams.**

The Examiner stated the following in his Answer:

“Instructions of use of the control module 40 can also be stored in the memory 90 for use as a help system. These instructions can be recalled with suitable prompting messages and output upon the display 70. Claim 65 only specifies one of a list of possible displayed graphical information, including ‘a bed status’. Since the control module 40 is used to control the bed and includes an integrated help system that outputs to the display the examiner submits that the help system would include messages that inform a user on how to use the bed control module 40 and/or how to operate the bed with the control module 40. (Examiner’s Answer, page 5).

As the Examiner suggested on page 5 of the Examiner’s Answer, Appellants have reviewed column 4, lines 17-34 and specifically line 27 which states that “the prompting messages can be output to the display 70.” The Examiner has misstated the teaching of Williams when he states that “these instructions can be recalled with suitable prompting messages and output upon the display 70.” (Examiner’s Answer, page 5). As shown above, Williams does not state that the instructions are recalled and output upon display 70, only the prompting messages can be output to the display. The Examiner impermissibly speculates that Williams’ “help system would include messages that inform a user... how to operate the bed with the control module 40.” (Examiner’s Answer, page 5). Williams only discusses providing “instructions on the use of control module 40.” (Williams, col. 4, lns. 24-25). Contrary to the Examiner’s interpretation, Appellants submit that Williams does not disclose or suggest a display depicting any type of variable graphical information related to a bed status.

Claim 65 adds to the claimed combination of claim 38 the further limitations that the variable graphical information includes at least one of a bed status, a menu of selectable bed therapies, a description of a selected therapy, a menu of control options for the selected therapy, and a record of patient information. There is no disclosure or suggestion of these claimed features in Marra, Mitchell, or Williams. Therefore, even if the examiner improperly combines Marra or Mitchell with Williams using impermissible hindsight, the proposed combinations would not produce the combination claimed in claim 65.

For at least these reasons, Appellants submit that claim 65 patentably defines the invention over the combinations of Marra and Williams and Mitchell and Williams. Therefore, Appellants respectfully requests reversal of the Examiner's rejection of claim 65.

3. **Claim 66 is patentable over the combinations of Marra and Williams and Mitchell and Williams.**

Appellants have reviewed column 4, lines 28 to 31 of Williams at Examiner's suggestion and concluded that Williams does not disclose or suggest the elements of claim 66. There is also no disclosure or suggestion of the claimed features in Marra, Mitchell, or Williams. The Examiner has provided only a vague statement for combining "wired data networks" with Williams and has again failed to supply any teaching or suggestion in either Marra, Mitchell, or Williams which supports the proposed combination. The Examiner is using impermissible hindsight to combine Marra and Williams and Mitchell and Williams.

Even if the references were improperly combined using impermissible hindsight, none of the references discloses or suggests that a "control circuit for storing predetermined graphic format data for viewing on the display screen" as specifically recited in claim 66. The Examiner has ignored this limitation in his rejection of claim 66.

For at least these reasons, Appellants submit that claim 66 patentably defines the invention over the combinations of Marra and Williams and Mitchell and Williams. Therefore, Appellants respectfully requests reversal of the Examiner's rejection of claim 66.

4. **Claim 67 is patentable over the combination of Marra and Williams and Mitchell and Williams.**

Claim 67 adds to the claimed combination of claim 38 and claim 66 the further limitation of "a control module coupled to a second module connection point of the communication network and configured to perform a dedicated function on the bed". Again, claim 67 is directed to more than just connecting a hospital bed to a communication network. The Examiner has not found any type of control module coupled to a second module connected point of communication network and configured to perform a dedicated function on the bed as claimed.

There is no disclosure or suggestion of the claimed elements in Marra, Mitchell, Williams, or the newly cited documentation regarding the X Window system provided by the Examiner. The Examiner has again failed to identify any text in Marra, Mitchell, or Williams that provides any disclosure or suggestion of the missing elements or any teaching or suggestion to combine either reference with the X Windows system. The Examiner is again using impermissible hindsight to combine elements of Marra, Williams and Mitchell and Williams, and the X Windows documentation to attempt to produce the combination claimed in claim 67.

For at least these reasons, Appellants submit that claim 67 patentably defines the invention over the combination of Marra, Mitchell, Williams, and the X Windows documentation. Therefore, Appellants respectfully requests reversal of the Examiner's rejection of claim 67.

5. Claim 69 is patentable over the combinations of Marra and Williams and Mitchell and Williams.

Claim 69 adds to the limitations of claim 38 that the variable graphical information "includes at least one of a charting format, a bar graph, an X-Y graph, a pie chart, an icon, and a picture representing a user selectable function".

With regard to claim 69, the Examiner stated the following in his Answer:

"Merely operating the control module 40 in order to display the integrated help system upon the display panel 70 is enough to meet the terms of the claim, since the help system can be considered a 'user selectable function.'" (Examiner's Answer, page 7).

The Examiner only partially described the user selectable function of claim 68 which properly is "a picture representing a user selectable function." Neither Williams nor Marra nor Mitchell discloses variable graphical information including "a picture representing a user selectable function" as claimed by claim 69. For at least these further reasons, Appellants submit that claim 69 patentably defines the invention over the combinations of Marra and Williams and Mitchell and Williams. Therefore, Appellants respectfully requests reversal of the Examiner's rejection of claim 69.

6. **Claims 38, 41 and 68 are patentable over the combination of Mitchell and Williams.**

This rejection to claim 38 is substantially similar to the rejection of claim 38 using a combination of Marra and Williams, as discussed above, which was also improper. As discussed above, there is no motivation to combine Williams with a siderail mounted controller because Williams repeatedly criticizes the use of siderail mounted controllers. One of ordinary skill in the art would clearly not have been motivated to combine Williams, which explicitly teaches away from using siderail controllers, with Mitchell, which uses a bed siderail mounted controller.

For at least these reasons, Appellants submit that claim 38 patentably defines the invention over the combination of Mitchell and Williams. Claims 41 and 68 depend from properly allowable claim 38. Therefore, Appellants respectfully requests reversal of the Examiner's rejection of claims 38, 41 and 68.

7. **Claim 40 is patentable over the combination of Mitchell and Williams.**

There is no disclosure or suggestion in either Mitchell or Williams that "the display screen is part of a pad that includes a switch panel configured to receive input form a user" as claimed in claim 40. The Examiner states that Williams includes a control panel 52 that includes buttons 54, 56, and 58 and a keyboard 72. (Examiner's Answer, page 7). "An input device, such as a keyboard 72 and a trackball 74, is disposed on the housing 42 and is covered by the display panel 76 when the display panel 76 is in a folded position." (Williams, col. 3, lns. 41-44). The multi-line display 70 is not part of a pad that includes switches configured to receive user input as claimed in claim 40. Therefore, even if the examiner improperly combines Mitchell and Williams using impermissible hindsight, the combination of Mitchell and Williams would not produce the combination claimed in claim 40.

For at least these reasons, Appellants submit that claim 40 patentably defines the invention over the combination of Mitchell and Williams. Therefore, Appellants respectfully requests reversal of the Examiner's rejection of claim 40.

8. Claim 42 is patentable over the combination of Mitchell and Williams.

As Appellants stated in the Appeal Brief, neither Mitchell nor Williams discloses a display screen wherein the “display screen faces away from the deck” as claimed by claim 42. As discussed above, the Examiner is using impermissible hindsight to combine Mitchell and Williams. Also, if a display screen were mounted on the Mitchell siderail, it would be upside down, and therefore inoperable, in one of its positions.

For at least these reasons, Appellants submit that claim 42 patentably defines the invention over the combination of Mitchell and Williams. Therefore, Appellants respectfully requests reversal of the Examiner’s rejection of claim 42.

9. Claim 43 is patentable over the combination of Mitchell and Williams.

Neither Mitchell or Williams discloses “a controller in electrical communication with the user input and the display screen, and wherein the controller is configured to display the variable graphical information on the display screen” as claimed in claim 43. As discussed above, the combination of Mitchell and Williams is improper and based solely on impermissible hindsight. In addition, even if the examiner improperly combines Mitchell and Williams using impermissible hindsight, the combination of Mitchell and Williams would not produce the combination claimed in claim 43.

For at least these reasons, Appellants submit that claim 43 patentably defines the invention over the combination of Mitchell and Williams. Therefore, Appellants respectfully requests reversal of the Examiner’s rejection of claim 43.

10. Claim 44 is patentable over the combination of Mitchell and Williams.

The Examiner stated the following in his Answer:

“Reference is made to the use of the keyboard 72 and trackball 74 as a means for inputting commands and data to the control module, the examiner submits that the only logical interpretation of this statement is that the control module uses a menu driven display system that allows such operation” (Examiner’s Answer, page 8).

Appellants disagree with the Examiner's assertion "the only logical interpretation of this statement is that the control module uses a menu driven display system that allows such operation." (Examiner's Answer, page 8). The Examiner's claim that a keyboard and trackball can only be used with a menu driven display system is completely unfounded. The Examiner again provides no support for this bald assertion. Neither Mitchell nor Williams discloses a controller that "provides a menu driven list of selectable options on the display screen to permit selection of control options using the user input" as claimed by claim 43. Therefore, even if the examiner improperly combines Mitchell and Williams using impermissible hindsight, the combination of Mitchell and Williams would not produce the combination claimed in claim 44.

For at least these reasons, Appellants submit that claim 44 patentably defines the invention over the combination of Mitchell and Williams. Therefore, Appellants respectfully requests reversal of the Examiner's rejection of claim 44.

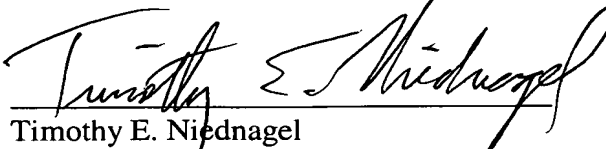
Conclusion

In view of the above, the Examiner's rejections are entirely without merit. Appellants therefore respectfully requests that the present rejections be reversed and a Notice of Allowance be issued in due course.

Appellants request that any required filing fees for this Reply Brief be charged to the account of Bose McKinney & Evans LLP, Deposit Account Number 02-3223.

Respectfully submitted,

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